

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Maurice Rogers,
Petitioner

vs

Case No. 1:02cv79
(Dlott, J.)

Harry K. Russell,
Respondent

ORDER

On September 16, 2003, this Court entered an Order adopting the United States Magistrate Judge's Report and Recommendation to grant in part and deny in part the respondent's motion to dismiss and to dismiss three of petitioner's four grounds for relief with prejudice on statute of limitations grounds. (*See* Docs. 6, 11). On May 27, 2004, this Court entered a final Order and Judgment in the case, adopting a subsequent Report and Recommendation to deny with prejudice petitioner's remaining ground for relief. (Docs. 15, 17, 18). In the May 27, 2004 Order and Judgment, this Court certified pursuant to 28 U.S.C. § 1915(a)(3) that an appeal would be taken in "good faith" and, therefore, granted petitioner leave to proceed on appeal *in forma pauperis* upon a showing of financial necessity. (Docs. 17, 18).

This matter is now before the Court for ruling on petitioner's application and affidavit to proceed on appeal *in forma pauperis* (Doc. 20), as well as petitioner's motion for appointment of counsel (Doc. 19). Petitioner's financial affidavit (Doc. 20) demonstrates that petitioner has insufficient funds to proceed on appeal from this Court's final Order and Judgment of May 27, 2004. Upon such showing of financial necessity, this Court hereby GRANTS petitioner's application for leave to proceed on appeal *in forma pauperis* (Doc. 20) in accordance with its May 27, 2004 Order and Judgment (*see* Docs. 17, 18). It is FURTHER ORDERED that petitioner's motion for

appointment of counsel on appeal (Doc. 19) is DENIED. Petitioner remains free, however, to request appointment of counsel on appeal from the United States Court of Appeals for the Sixth Circuit.

IT IS SO ORDERED.

s/Susan J. Dlott
Susan J. Dlott, Judge
United States District Court